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5 Attorneys for Complainant

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7 BEFORE THE
8 BOARD OF MEDICAL QUALITY ASSURANCE
DIVISION OF MEDICAL QUALITY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation) No. D-3977
Against:)
12)
13 PHILIP G. BROECKEL, M.D.) DEFAULT DECISION
P.O. Box 65)
14 San Juan, Texas 78589)
California Physician's and)
15 Surgeon's Certificate)
No. G2717,)
16 Respondent.)
17

18 FINDINGS OF FACT

19 1. On May 30, 1989, Kenneth J. Wagstaff, in his
20 official capacity as the Executive Director of the Board of
21 Medical Quality Assurance, Department of Consumer Affairs, State
22 of California (hereafter the "Board"), filed an Accusation
23 against respondent Philip G. Broeckel, M.D. (hereafter
24 "Respondent") in Case No. D-3977.

25 2. On May 30, 1989, Suzanne Taylor, an employee of the
26 Board, sent by certified mail true copies of the Accusation
27 No. D-3977, Statement to Respondent, Request for Discovery,

1 Government Code sections 11507.5, 11507.6 and 11507.7, and the
2 Notice of Defense (in triplicate) to Respondent at P. O. Box 65,
3 San Juan, Texas, the address of record for Respondent which is on
4 file with the Board. On or about June 13, 1989, the
5 aforementioned documents were returned to the Board stamped
6 "Return to Sender" by the United States Postal Service. This
7 service on Respondent of the aforementioned documents is
8 effective pursuant to the provisions of California Government
9 Code section 11505, subdivision (c).

10 3. On May 6, 1954, the Board issued Physician's and
11 Surgeon's Certificate No. G2717 to Respondent. Said certificate
12 is in CANCELLED STATUS at the present time.

13 4. California Government Code section 11506 provides,
14 in pertinent part, that:

15 "[t]he respondent shall be entitled to a hearing
16 on the merits if he files a notice of defense, and any
17 such notice shall be deemed a specific denial of all
18 parts of the accusation not expressly admitted.
19 Failure to file such notice shall constitute a waiver
20 of respondent's right to a hearing, but the agency in
21 its discretion may nevertheless grant a hearing."

22 5. Respondent failed to file a Notice of Defense
23 within 15 days after service upon him of Accusation No. D-3977,
24 as described in paragraph 2, above, and has therefore waived his
25 right to a hearing on the merits of Accusation No. D-3977.

26 6. California Government Code section 11520 provides,
27 in pertinent part, that:

1 "[i]f the respondent fails to file a notice of
2 defense or to appear at the hearing, the agency may
3 take action based upon the respondent's express
4 admissions or upon other evidence and affidavits may be
5 used as evidence without any notice to respondent;
6 "

7 7. California Business and Professions Code section
8 2220 provides in pertinent part:

9 "Except as otherwise provided by law, the Division
10 of Medical Quality may take action against all persons
11 guilty of violating the provisions of this chapter.
12 The division shall enforce and administer the
13 provisions of this article as to physician and surgeon
14 certificate holders, and the division shall have all
15 the powers granted in this chapter for these purposes .
16 "

17 8. California Business and Professions Code section
18 2227 provides:

19 "A licensee whose matter has been heard by the
20 Division of Medical Quality, by a medical quality
21 review committee, or a panel of such committee, or by
22 an administrative law judge, or whose default has been
23 entered, and who is found guilty may, in accordance
24 with the provisions of this chapter:

25 "(a) Have his or her certificate revoked upon
26 order of the division.

27 ///

1 "(b) Have his or her right to practice suspended
2 for a period not to exceed one year upon order of the
3 division or panel thereof.

4 "(c) Be placed on probation upon order of the
5 division or a committee or panel thereof.

6 "(d) Publicly reprimanded by the division or a
7 committee or panel thereof.

8 "(e) Have such other action taken in relation to
9 discipline as the division, a committee or panel
10 thereof, or an administrative law judge may deem
11 proper."

12 9. California Business and Professions Code section
13 2234 provides in pertinent part:

14 "The Division of Medical Quality shall take action
15 against any licensee who is charged with unprofessional
16 conduct."

17 10. California Business and Professions Code section
18 2305 provides in pertinent part:

19 "The revocation, suspension, or other discipline by
20 another state of a license or certificate to practice
21 medicine issued by the state, ..., to a licensee under
22 this chapter shall constitute grounds for disciplinary
23 action for unprofessional conduct against such licensee
24 in this state."

25 11. Respondent has subjected his license to
26 disciplinary action under Business and Professions Code section
27 2234 on the grounds of unprofessional conduct as defined in

1 section 2305 of that Code in that respondent's license to
2 practice medicine in the State of Texas was disciplined by the
3 State of Texas as more particularly alleged hereafter:

4 (a) On or about April 20, 1988, the Texas State Board
5 of Medical Examiners filed a formal complaint against Respondent
6 in the proceeding entitled In the Matter of Philip G. Broeckel,
7 M.D.;

8 (b) On or about June 15, 1988 the Texas State Board of
9 Medical Examiners In The Matter of the Disciplinary Proceeding
10 against Philip G. Broeckel, M.D. found inter alia that Respondent
11 had been convicted for four separate felonies.

12 (c) On or about June 16, 1988, the Texas State Board
13 of Medical Examiners ordered and decreed that Respondent's
14 license to practice medicine in the State of Texas be revoked.

15 DETERMINATION OF ISSUES

16 1. Respondent is subject to disciplinary action under
17 California Business and Professions Code sections 2234 and 2305
18 by reason of the Findings of Fact numbers 1 through 11, above.

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ORDER

Physician's and Surgeon's Certificate No. G2717,
heretofore issued to Philip G. Broeckel, M.D., is hereby revoked.

The effective date of this Order is December 4,
1989.

Pursuant to California Government Code section 11520,
subdivision (b), Respondent is entitled to make any showing by
way of mitigation prior to and including the effective date of
this decision.

This Order is made this 3rd day of November,
1989.



DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

THERESA CLAASSEN
Secretary/Treasurer

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SD88AD0994

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8 BEFORE THE
BOARD OF MEDICAL QUALITY ASSURANCE
9 DIVISION OF MEDICAL QUALITY
10 STATE OF CALIFORNIA
11

12 In the Matter of the Accusation)
Against:)

NO. D-3977

13 PHILLIP G. BROECKEL, M.D.)
14 P. O. Box 65)
San Juan, Texas 78589)

ACCUSATION

15 California Physician and Surgeon)
16 Certificate No. G2717,)

17 Respondent.)
18

19 Complainant Kenneth J. Wagstaff alleges as follows:

20 1. Complainant is the Executive Director of the Board of
21 Medical Quality Assurance (hereinafter the "Board") and makes
22 this accusation solely in his official capacity as such.

23 2. At all times mentioned herein respondent
24 Phillip G. Broeckel, M.D. (hereinafter "respondent") was licensed
25 by the Board under Physician and Surgeon Certificate No. G2717.
26 Said certificate was issued by the Board on May 6, 1954, and is
27 in a CANCELLED STATUS since December 31, 1985.

1 3. California Business and Professions Code section 2220
2 provides in pertinent part:

3 "Except as otherwise provided by law, the
4 Division of Medical Quality may take action against
5 all persons guilty of violating the provisions of this
6 chapter. The division shall enforce and administer the
7 provisions of this article as to physician and surgeon
8 certificate holders, and the division shall have all the
9 powers granted in this chapter for these purposes"

10 4. California Business and Professions Code section 2227
11 provides:

12 "A licensee whose matter has been heard by the
13 Division Medical Quality, by a medical quality review
14 committee, or a panel of such committee, or by an
15 administrative law judge, or whose default has been
16 entered, and who is found guilty may, in accordance with
17 the provisions of this chapter:

18 "(a) Have his or her certificate revoked upon
19 order of the division.

20 "(b) Have his or her right to practice suspended
21 for a period not to exceed one year upon order of the
22 division or panel thereof.

23 "(c) Be placed on probation upon order of the
24 division or a committee or panel thereof.

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26 or panel thereof.

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1 "(e) Have such other action taken in relation to
2 discipline as the division, a committee or panel thereof,
3 or an administrative law judge may deem proper."

4 5. California Business and Professions Code section 2234
5 provides in pertinent part:

6 "The Division of Medical Quality shall take action
7 against any licensee who is charged with unprofessional
8 conduct."

9 6. California Business and Professions Code section 2305
10 provides in pertinent part:

11 "The revocation, suspension, or other discipline by
12 another state of a license or certificate to practice
13 medicine issued by the state, ..., to a licensee under
14 this chapter shall constitute grounds for disciplinary
15 action for unprofessional conduct against such licensee
16 in this state."

17 7. Respondent has subjected his license to disciplinary
18 action under Business and Professions Code section 2234 on the
19 grounds of unprofessional conduct as defined in section 2305 of
20 that Code in that respondent's license to practice medicine in
21 the State of Texas was disciplined by the State of Texas more
22 particularly alleged hereinafter:

23 (a) On or about April 20, 1988, the Texas State Board of
24 Medical Examiners filed a formal complaint against respondent for
25 the proceeding entitled In the Matter of Phillip G. Broeckel,

26 M.D.;

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(b) On or about June 15, 1988 the Texas State Board of Medical Examiners In The Matter of the Disciplinary Proceeding against Phillip G. Broeckel, M.D. found inter alia that respondent had been convicted for four separate felonies.

(c) On or about June 16, 1988, the Texas State Board of Medical Examiners ordered and decreed that respondent's license to practice medicine in the State of Texas be revoked.

8. A copy of the formal complaint and the Board Order referred to in paragraph 7 above are attached as Attachment "A" and incorporated by reference herein as if fully set forth.

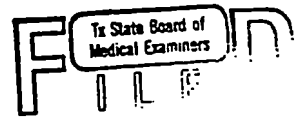
WHEREFORE, Complainant prays that the Division of Medical Quality hold a hearing on the allegations contained herein, and, following said hearing, take such action as provided by sections 2234 and 2227 of the Business and Professions Code, taking such other and further action as may also be proper.

DATED: May 30, 1989 .


KENNETH J. WAGSTAFF
Executive Director
Board of Medical Quality Assurance
Division of Medical Quality Assurance
Department of Consumer Affairs
State of California

Complainant

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IN THE MATTER OF:

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BEFORE THE

TEXAS STATE BOARD

MAY 13 1988

PHILLIP G. BROECKEL, M.D.

OF MEDICAL EXAMINERS

BOARD ORDER

On the 15th day of June, 1988, came on to be heard for final action by the Texas State Board of Medical Examiners (hereinafter "the Board"), duly in session, the matter of Phillip G. Broeckel, M.D., Respondent herein. The Board was represented by Mr. Bill Campbell; Respondent did not appear personally and was unrepresented otherwise. A complaint filed with the Board alleged that Respondent had violated Sections 3.08 and 4.01 of Article 4495b, V.T.C.S. (1988), also known as the Texas Medical Practice Act (hereinafter "the Medical Practice Act"). The matter was heard in public hearing on May 9, 1988, before Connie Odé, Hearings Examiner duly appointed by the Board, sitting in Austin, Travis County, Texas.

After consideration of the Proposal for Decision submitted to the Board by the Hearings Examiner and having heard the arguments of the parties, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent is a physician licensed by the Board. He holds Texas medical license number G-3950.

2. On December 15, 1987, Respondent was convicted of four separate felonies in Hildalgo County, Texas. The offenses, dates thereof, and sentences entered in conjunction therewith are as follows:

- (i) Sexual indecency with a child by sexual contact
March 31, 1985
8 years confinement in the Texas Department of Corrections;
- (ii) Sexual assault
November 14, 1984
20 years confinement in the Texas Department of Corrections, plus a \$10,000.00 fine;
- (iii) Aggravated sexual assault
March 31, 1985
50 years confinement in the Texas Department of Corrections; and
- (iv) Sexual assault
October 31, 1984
20 years confinement in the Texas Department of Corrections, plus a \$10,000.00 fine.

3. With respect to each such felony conviction, Respondent entered a plea of not guilty but failed to appear for trial or sentencing. Respondent's current whereabouts are unknown.

4. Respondent was sentenced to a total of 98 years (each sentence to run consecutively to the others) and

fined a total of \$20,000.00.

5. In September, 1985, Respondent was denied reappointment to the medical staff of McAllen Methodist Hospital due to his failure to provide proof of malpractice insurance coverage and his failure to attend 50% of the hospital staff meetings as required by the hospital's bylaws.

6. In December, 1986, Respondent's OB/GYN privileges at McAllen Medical Center were suspended pending Respondent's completion of an approved six-month OB/GYN course.

7. Respondent has not been reappointed to the medical staff at McAllen Methodist Hospital, nor have his OB/GYN privileges been reinstated at the McAllen Medical Center.

8. The denial by the McAllen Methodist Hospital of Respondent's reappointment to its medical staff was based on unprofessional conduct by Respondent. The hospital's actions were appropriate in light of Respondent's failure to prove malpractice insurance coverage and failure to attend staff meetings as required.

9. The Board is unable to determine whether the suspension of Respondent's OB/GYN privileges by the McAllen Medical Center in December, 1986 was appropriate, inasmuch as no evidence of the circumstances surrounding the Center's requirement that Respondent complete an OB/GYN

course was presented to the Hearings Examiner or the Board.

10. Respondent received notice of the Board's complaint and the hearings to be held in regard thereto, in accordance with Section 4.03(b) of the Medical Practice Act.

CONCLUSIONS OF LAW

1. Section 3.08(2) of the Medical Practice Act provides:

The board may refuse to admit persons to its examinations and to issue a license to practice medicine to any person for any of the following reasons:

* * *

(2) conviction of a crime of the grade of a felony or a crime of a lesser degree that involves moral turpitude;

2. Section 3.08(19) of the Medical Practice Act provides:

The board may refuse to admit persons to its examination and to issue a license to practice medicine to any person for any of the following reasons:

* * *

(19) ... being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if that action in the opinion of the board was based on unprofessional conduct or

professional incompetence that was likely to harm the public, provided that the board finds that the actions were appropriate and reasonably supported by evidence submitted to it;

3. Section 4.01(a) of the Medical Practice Act provides:

... the board may cancel, revoke, or suspend the license of any practitioner of medicine or impose any other authorized means of discipline upon proof of the violation of this Act in any respect or for any cause for which the board is authorized to refuse to admit persons to its examination and to issue a license, including an initial conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude.

4. Section 4.12 of the Medical Practice Act sets out methods of discipline. These include:

- (1) Denying the person's application for a license or other authorization to practice medicine;
- (2) Administering a public reprimand;
- (3) Suspending, limiting, or restricting the person's license or other authorization to practice medicine, including limiting the practice of the person to or by the exclusion of one or more specified activities of medicine or stipulating periodic board review;
- (4) Revoking the person's license or other authorization to practice medicine;

(5) Requiring the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for the initial, continued, or renewal of a license or other authorization to practice medicine;

(6) Requiring the person to participate in a program of education or counseling prescribed by the board;

(7) Requiring the person to practice under the direction of a physician designated by the board for a specified period of time; or

(8) Requiring the person to perform public service considered appropriate by the board.

5. Section 5 of Art. 6252-13d, V.T.C.S., relating to the "Eligibility of Persons with Criminal Backgrounds for Certain Occupations, Professions, and Licenses" and the "Suspension, Revocation, or Denial of License to Persons with Criminal Backgrounds; Guidelines and Application of Law," provides specifically that the Act shall not apply to those persons licensed by the Texas State Board of Medical Examiners.

6. Respondent's convictions for sexual indecency with a child by sexual contact, sexual assault (two counts), and aggravated sexual assault on December 15, 1987 in the 332d District Court of Hildalgo County, Texas, constitute final convictions of crimes of the grade of felony, in accordance with Section 3.08(2) of the Medical Practice Act.

7. The denial of Respondent's reappointment to the McAllen Methodist Hospital medical staff in September, 1985 was based on unprofessional conduct by Respondent and was appropriate under the circumstances. However, inasmuch as this denial was not made a basis of the Board's complaint against Respondent, it will not serve as a basis for the Board's decision herein.

IT IS ORDERED AND DECREED that Respondent's license to practice medicine in Texas be and it is hereby revoked.

IT IS FURTHER ORDERED AND DECREED that Respondent pay all costs associated with an appeal of this order, if any.

SIGNED this 16th day of June, 1988.


FOR THE BOARD